BRABAKARAN v. PUBLIC PROSECUTOR

[F.C. (Ong Ag.C.J. (Malaya), Ismail Khan and McIntyre JJ.) September 17, 1965]

[Ipoh — Federal Court Criminal Appeal No. 40 of 1965]

Penal Code, s. 376 — Rape — Girl below statutory age of consent — Corroboration — Sentence.

The appellant was found guilty of rape of his sister-in-law, a girl under the age of 14 years and sentenced to three years' imprisonment. He appealed.

Held: on the facts the appellant was rightly convicted but as in this case no violence was resorted to by the appellant to overcome resistance and therefore he would have not committed any offence if the girl had been a little older, the sentence of three years was excessive and should be reduced to 18 months' imprisonment.

FEDERAL COURT.

V. Jeyaratnam for the appellant.

Syed Hassan Aljeffri (Deputy Public Prosecutor) for the respondent.

Ong Ag.C.J. (Malaya): In this case the appellant was convicted of rape of his sister-in-law, a girl under the age of 14 years, and sentenced to three years' imprisonment. Whatever difficulties might have presented themselves at the commencement of the trial were resolved by the learned trial judge, who amended the charge from a date in December, 1963, to a date in May, 1964. In a carefully considered judgment, he had given the reasons why he was satisfied with the evidence of the girl, and he also expressly referred to the need to seek corroboration, which he in fact found.

The girl in question, being under the age of 14, the statutory age of consent in this type of cases, it is clear beyond question that, whoever had intercourse with her, had committed the offence of rape in contravention of section 376 of the Penal Code. Therefore, as the learned trial judge himself put it, what remained for him to decide was only the question whether or not it was the appellant who had committed the acts of intercourse alleged to have taken place. For the purpose of this case, we take the same view as the learned trial judge that it is unnecessary to decide to what extent the girl's consent to the act of intercourse was obtained by the influence of her elder sister. He was satisfied and found as a fact that in December, 1963, as well as in May, 1964, the appellant had intercourse with the girl. We also have arrived at the same conclusion of fact.

Corroborative evidence is not necessarily restricted to the oral evidence of an independent witness. Corroboration can equally well be afforded by established facts and the logic of established facts sometimes speaks even more eloquently than words. We are of opinion that if, during the period of her elder sister's confinement, it was necessary for the girl to remain in her sister's house in order to help look after her sister's children, when the appellant's mother had to go to hospital again and the girl's services were again called for, it was more than probable that what she said was true and that she, in fact, went to assist her sister's family during the absence of the appellant's mother in hospital from April to May. It has not been suggested that this girl was in any way promiscuous; it was not suggested that she had any male friends, and it is equally clear that whatever might have been her state of mind towards the first act in December, she was more than a willing party in all the subsequent acts of intercourse with the appellant. We do not consider it necessary for the prosecution to indulge in a process of elimination when there was no suggestion that anybody else even remotely connected could have had intercourse with this girl. For the reasons above stated, we are entirely satisfied that the learned trial judge was right in convicting the appellant and his appeal on conviction is accordingly dismissed.

As regards sentence, in the first place, there is a very wide gulf between this case where, if the girl had been a little older, the accused would not have committed any offence and the other types of rape where violence was resorted to to overcome resistance. In the second place, the girl is unlikely to suffer any psychological after-effects. In the third place, as regards damage to her future prospects of marriage, we do not think there are any serious impediments to such prospects, were she to move to another locality with her family. We accordingly think that the term of three years' imprisonment was on the excessive side and substitute for it a sentence of 18 months' imprisonment.

Order accordingly.

Solicitors: *Cheang Lee & Ong.*

OTHMAN BIN AHMAD v. SINGAPORE TRACTION CO. LTD.

[F.C. (Tan Ah Tah Ag.C.J., Buttrose and Chua JJ. September 22, 1965]

[Singapore — Federal Court Civil Appeal No. 38 of 1965]

Negligence — Personal injuries — Quantum of damages — Damages for pain and suffering and loss of amenities — Loss of future earnings.

Damages — Leg — 1" shortening — Multiple injuries.

This was an appeal by the plaintiff against the award of damages (noted at [1965] 1 M.L.J. xxvi) made in an action brought by the plaintiff against the defendants for damages for personal injuries suffered by the plaintiff and caused by the negligence of the defendant's servant in driving a motor bus. The plaintiff suffered severe injuries to his left leg and these have left him with a deformed foot and short leg. Moreover the ankle and other joints in the foot were affected and showed